United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

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76-1109

To be argued by
EDWARD R. KORMAN

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1109

UNITED STATES OF AMERICA,
Appellee,

—*against*—

PASQUALE INTRIERI,
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLEE

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases:

Statutes:

Miscellaneous:

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Preliminary Statement

Pasquale Intrieri, the defendant, appeals from a judgment of conviction entered on March 5, 1976 in the United States District Court for the Eastern District of New York (Judd, *J.*) after a jury trial convicting him of four counts of wilfully attempting to evade income tax in violation of 26 U.S.C., Section 7201 and four counts of knowingly signing a false statement in violation of 26 U.S.C., Section 7206 for the years 1968, 1969, 1970 and 1971 respectively. The defendant was sentenced to imprisonment for a term of five years on those counts charging a violation of Section 7201 and to imprisonment for three years on those counts charging a violation of Section 7206, the sentences to be served concurrently. He was fined $30,000.

Statement of Facts

A. Introduction

This is an unusual case. Pasquale Intrieri, the defendant, was a Lieutenant in the New York City Police Department during the years 1968-1971, and for many years before then. His income tax returns filed for those years indicated a net income of approximately $42,500 (after ordinary deductions) for the entire four year period (Gov. Ex. 1-4). Although he was supporting two children by an earlier marriage, although he was also supporting his new wife and a child by this marriage, and although during one of those years provided support for four children of his brother, Lieutenant Intrieri managed to sustain extraordinary expenditures in excess of $200,000 over the same four year period.

These expenditures included $29,584.06 towards the purchase of a home in Flushing, Queens in 1968; $44,731.73 to provide housing for Lt. Intrieri's brother, his brother's family and his mother in 1969; increases in Lt. Intrieri's bank account of $9,118.72 in 1970, and the purchase of two Buick automobiles and a Mercedes Benz automobile totalling $23,334.70 in 1971.[1]

Significantly, these purchases came in the wake of a financially disastrous divorce settlement in 1968 between appellant and his first wife, Joan Intrieri. The evidence established that she received control of substantially all of Lt. Intrieri's assets. Moreover, a rigorous and extensive investigation by the Internal Revenue Service showed that the defendant had no substantial non-taxable sources of income available to him.

What makes the case unusual, however, is not so much the size of the expenditures—corruption in the New York City Police Department having been as rampant as it

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[1] We have annexed hereto Gov. Exhibit 197, which sets forth expenditures for each of the years at issue (Appendix, *infra*, 1a-5a).

was [1a]—but the carefully orchestrated explanation for the large bulk of these expenditures which was designed to conceal what, in reality, was the process by which the defendant laundered the income on which he had evaded his taxes.

The only "explanation" offered by the defendant for the source of any of the money he expended was that it was provided by his relatives, "elderly people who have attempted to help their children" (Tr. 18). As his lawyer told the jury in his opening statement (Tr. 16-18):

> "[B]asically, when you blow away all the smoke, this case will center on three main items. These items are as follows: the purchase of the residence of my client where he now lives with his wife and children in 1968; the purchase in 1969 of property on Kimball Avenue where my client's mother and brother now reside; and the purchase in 1971 of a Mercedes Benz automobile which is presently possessed by my client's wife and is registered in the name of his mother-in-law.
>
> The story that the evidence will show you * * * involves mainly two people. The two people are the mothers on each side of a marriage: by client's mother, Mrs. LaManda, and my client's wife's mother, Mrs. Fabio. These women whom you will hear from the witness stand are relatively along in years. They are in their sixties. You will see that they are from the old school, so to speak, perhaps indulging in a distr[ust] of banking institutions, having lived through the depression. They may embrace the credence of when it comes to money there is no safer place than home.
>
> And the evidence will show that my client's mother-in-law, his wife's mother, Mrs. Fabio, she

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[1a] See *Report of the Commission To Investigate Allegations of Police Corruption And The City's Anti-Corruption Procedures*, dated December 26, 1972.

made possible the purchase of my client's home in 1968. She made this possible by cashing in five or—excuse me, four savings certificates, each in the amount of $5,000 that belonged to her sister, a woman by the name of Bridget Stefano. In 1971 my client's mother-in-law bought for her daughter a Mercedes Benz automobile.

With regard to the purchase of the property that I referred to on Kimball Avenue where my client's mother resides, where his brother resides, this is a closely knit family. This purchase took place in 1969. The bulk of the money came from my client's mother."

Of course, Lieutenant Intrieri did not take the stand, but chose, instead, to leave to his relatives, including his mother, his mother-in-law and his brother, the impossible task of explaining how deceased relatives, some of whom had meager incomes themselves, had accumulated large cash hoards, and why, when they kept money in banks, they kept this cash at home. Moreover, he also left to them the task of explaining the reason for the complicated manner in which this cash was laundered to make it appear that it was the product of money accumulated in savings accounts. Although these witnesses were called by the United States for the purpose of negating the presence of non-taxable sources for the defendant's expenditures, the defendant adopted the substance of their testimony in making his defense (Tr. 16-20).

This, then, is an overview of an income tax case, predicated on the expenditures method of proof, which we shall detail more fully below.

B. The 1968 Cash Expenditures

In 1968, having declared a gross income of $18,181, the defendant expended some $43,322.59, which did not include ordinary cost of living expenses. Of this amount,

the defendant disputed only $20,000 which was used to purchase a house for himself and his second wife, Rosemary. The defendant claimed that his mother-in-law, Mrs. Florence Babio was the source for his expenditure.[1] Mrs. Babio's role in this transaction, however, was more complicated than the simple act of transferring $20,000 to her daughter. Instead, the undisputed evidence established that, on June 28, 1968, four days after the defendant entered into a contract for the purchase of his new home at 33-64—165th Street in Queens, Florence Babio opened up four separate savings accounts in the amount of $5,000.00 each at the Flushing Federal Savings and Loan Association. More accurately described as certificates of deposit, these accounts paid a higher rate of interest in return for a commitment by the depositor to keep the monies on deposit for a set period of time. A withdrawal of the principal prior to the end of the period results in the imposition of a penalty.

The $20,000 for these four accounts belonged to Mrs. Babio's sister and came from a joint account which was in the name of Mrs. Babio and her nephew (who was a minor). According to Mrs. Babio, the account was in her name, rather than her sister's name, because her sister was too ill to go to the bank to deposit or withdraw money herself.

Although the $20,000 was withdrawn from this account by Mrs. Babio and placed in the four certificates of deposit, in order to obtain a greater rate of interest (Tr. 215), on September 23, 1968, less than 90 days later, the four certificates of deposit were closed out (at a substantial penalty), and a check in the amount of $20,000.00 was issued to Mrs. Babio's daughter, the defendant's wife, Rosemary Intrieri. This check, comprising the life savings

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[1] Of course, even assuming that this explanation was credited, the defendant's income exceeded declared income (non-taxable and receipts for 1968 (See Appendix, *infra*, pp. 1a-5a).

of Mrs. Babio's sister, was ultimately used for the purchase of the defendant's new home, the closing for which took place on September 25, 1968.

On September 27, 1968, two days after the closing, $20,000.00 *in cash* was redeposited in a savings account in the name of Mrs. Babio's sister at the Flushing Federal Savings and Loan Association (Tr. 165-168). The explanation for this curious series of transactions, as given by Mrs. Babio, is as follows:

Sometime after the four $5,000.00 certificates of deposit were opened, Mrs. Babio claimed to have had a discussion with her sister, in which Mrs. Babio told her of her daughter's need for assistance in the purchase of a house, and her sister suggested that Mrs. Babio take the $20,000.00 which had just been placed in certificates of deposit (Tr. 220):

> "We were discussing and she said, 'You know, I have that money there. I'm not going to use it.' Because she had that money there for her son. 'And if your daughter needs it, she could have it.'"

When asked whether she had discussed how she expected to repay her sister, Mrs. Babio responded (Tr. 220-221):

> "Q. And did you indicate to her how she would be paid back? A. How? I told her that she would get it back. I didn't have to tell her how. I wasn't going to take the money away from her.
>
> Q. We know that, Mrs. Babio, but I'm asking you if you told her who was going to pay her back? A. Whoever. My daughter. Myself, my son-in-law.
>
> Q. And did you tell her when she was going to be paid back? A. No.

Q. Did—— A. How could I?

Q. Did she ask you when? A. No. She wasn't interested."

Shortly after taking the $20,000.00, Mrs. Babio explained, she became worried and had a conversation with her now deceased husband (Tr. 227). She told him she was concerned about whether she had done the "right thing" in taking her sister life savings. Her husband told her not to worry (T. 228, 229):

"A. It was done. But he told me not to worry.

Q. Did he tell you why you should not worry? A. No, he didn't tell me why I shouldn't worry. But he knew I was worried and didn't like it. And one day he came home and he gave me the money to pay my sister.

Q. One day he came home and gave you the money; is that right? A. Yes.

Q. Where did he come from? A. Well, he only came from work. That's the only path he made is to work and back.

* * * * *

Q. Well, did he give you the—a check in an envelope or did he give you cash? A. No, it was not a check. It was cash. Because my husband always had money. I always felt he had money."

When asked whether she had asked her husband why he had not kept the $20,000 in a bank, she responded (Tr. 235):

"Oh, I have asked him when I married him. I didn't have to ask him. I knew that he didn't believe in banks."

* * * * *

"He was brought up that way. He just didn't believe in banks. I don't know why."

This story, which seems absurd on its face, was conclusively shown to be false.

First, Mrs. Babio admitted that on the very day she gave the defendant and his wife the check for $20,000.00, she and her husband had over $12,000.00 in joint bank accounts (Tr. 244-245). Indeed, when in 1960, Con Edison took over the operation of the facility at which Mr. Babio was employed from the City of New York, and Mr. Babio chose to withdraw in a lump sum his pension contribution of $3,400.00, he deposited the check into his bank account (Tr. 622).

Second, Mr. Babio, a laborer at a power house who held the same job for 35 years prior to his retirement in 1970, hardly earned enough money to have accumulated a cash hoard of $35,000 (Mr. Babio is also alleged to have been the source of a $15,000 cash expenditure in 1971). Thus, Mr. Babio's net take home pay in the ten years prior to his retirement from his job with Con Edison averaged approximately $6,900 per year (Tr. 349). And his yearly earnings in the years prior to 1960 were considerably smaller (Tr. 970, 330-334, 344). Moreover, in 1967, in a financial statement filed in connection with the acquisition of a co-operative apartment, Mr. Babio indicated that he had $8,000.00 in bank accounts and "some" stocks and bonds (Gov. Ex. 194a). He did not list any other assets.

Third, when Mr. Babio made any significant cash expenditure of his own, he withdrew money from his bank account, rather than from any alleged cash hoard, as he did when he purchased the co-operative apartment for $3,500.00, and when he loaned his son money to purchase an apartment in the same building.

Finally, in an interview with a personnel representative of Con Edison in 1968, prior to Mr. Babio's retirement in 1970, Mrs. Babio expressed her concern about their future financial picture (Tr. 970).[2] Similar expressions

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[2] Mrs. Babio was told that the pension was so small because Mr. Babio's average earnings over 42 years were so low (Tr. 970).

of concern were voiced by Mrs. Babio in an interview following her husband's death in 1970 (Tr. 971). This even though, as we shall see, her husband allegedly gave her $15,000 in cash prior to his death to be used for the purchase of a car for his daughter, the defendant's wife. Such a purchase of a Mercedes Benz was made in 1971.

In short, Mrs. Babio's tale was shown to be incredible. Contrary to her claim that her husband "didn't believe in banks", he constantly kept money in banks. Contrary to her claim that she "always knew" her husband had money, she herself expressed concern about how they would support themselves after his retirement. Contrary to her claim that he had accumulated a large cash hoard, the record of his earnings, and his own declared net worth in 1967, showed that he could not possibly have been the source of these expenditures. Moreover, despite Mrs. Babio's concern about her financial condition, not a nickle of the $20,000 loan she allegedly made to her daughter had ever been repaid (Tr. 284-285).

We observed at the outset of our discussion of the year 1968, that the defendant—having available a gross income of $18,181—expended $43,322.59. He disputed only $20,000 of $29,584.06, which was used to purchase his house. The foregoing evidence plainly disproved his claim that this money was a loan for which his deceased father-in-law was ultimately the source.

C. The 1969 Cash Expenditures

In 1969, having a gross income of $15,712, the defendant had cash expenditures of $60,553.19, which did not include the ordinary cost of living expenses. Of this, the only disputed item was $44,731.73 which was used toward the purchase of a home for his brother, and an adjacent carriage house for his mother at 766 and 768

Kimball Avenue in Yonkers (Tr. 376-378). The total cost of the properties was $51,500, which was paid in full at the time of the closing. This transaction was again accompanied by a strange tale both as to the source of the money and the manner in which it was expended.

One would have thought, from a review of his financial history, that Nicholas Intrieri would have been the last person to purchase two homes for $51,500. Nicholas Intrieri, who had five children, had a *total* reported income of little less than $12,000 for 1967, 1968 and 1969; and, in 1970, the year after the houses were purchased, he had so little income that he did not file any return, and his five children were supported by the defendant (Tr. 28-29, Gov. Ex. 3). Yet, he claimed to have financed the purchase in the following manner:

First, Nicholas Intrieri said he managed to accumulate a cash hoard of $11,000 — over the years — which he kept in a tin box at home (Tr. 483-484). The reason for having kept the money at home, when at the same time he had money which he kept in the bank, was that (Tr. 487-488):

> "This particular money that I saved outside—I did have money in the bank at this time. I also had this money. This money—again, to me, it was putting in toward a retirement plan. That is what I am trying to say. I wasn't overly interested in the interest that it might be drawing."[3]

Second, Nicholas Intrieri admitted receiving $10,000 in cash from the defendant in 1969. This he received in two installments of $5,000 each in brown paper bags (Tr. 480-483).

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[3] When he testified before the grand jury, he said that he kept the money at home to avoid paying tax on interest (Tr. 487).

(On the basis of this testimony alone, and the undisputed evidence as to other expenditures, the defendant was shown to have expended substantially in excess of his reported income, even if one accepts the explanation for the sources of the remaining $34,731.73 used toward the purchase of the Kimball Avenue properties).

Third, Nicholas Intrieri testified that he received $30,000 from his mother, Julia Intrieri Lamanda (who had remarried after the death of her first husband, Domenic Intrieri). The manner in which this money was allegedly accumulated is truly a tale; for this money was the product of three separate cash hoards, accumulated by her deceased mother-in-law, Marie Intrieri, by her deceased first husband, Dominick Intrieri, and by herself.

Mrs. Lamanda testified that prior to her death, Marie Intrieri had accumulated $10,000 in cash in a box in the floor of the basement of the home they occupied together, and another $2,000 in a trunk in the bedroom closet. This testimony was given in the face of clear evidence that Marie Intrieri, who left a will, had numerous bank accounts (and, indeed had kept money in banks throughout the depression). Moreover, this $12,000 was not listed as having been part of Marie Intrieri's estate.

Another $3,000 of the $30,000, was the product of cash allegedly accumulated at home by Domenick Intrieri, although he, too, had kept money in banks throughout his life, and, indeed, prior to his death was shown to have made periodic withdrawals of interest (Gov. Ex. 146). Finally, Mrs. Lamanda herself claimed to have saved $15,000 at home, even though she also had kept money in banks (Tr. 570-571). This fund was allegedly accumulated from money given to her by her children over the years when they were living with her (Tr. 565-566). This testimony was relied upon by the defendant even though his mother was apparently so poor that, in 1967, the defendant claimed her as a dependent on his tax return and stated that he was the sole source of her support.

So much for the source of this income. Here again, however, the monies from the cash hoards did not make their way directly from tin box to the seller of the house. A laundering process similar to that used by Mrs. Babio in 1968 was employed here. Without burdening the brief with the precise details, it suffices to say that, after the contract of sale was signed and prior to the closing date, the monies allegedly accumulated by Nicholas Intrieri, and Julia Lamanda, were deposited in various amounts and on different dates over a period of a month, in numerous banks. In the case of Nicholas, it involved the opening of new accounts, and, in the case of Mrs. Lamanda, deposits in existing accounts, some of them long dormant, and at a bank distant from her home. Needless to say, following the pattern, these monies were withdrawn within weeks, if not days of their deposit, in the form of checks used toward the purchase of the two adjoining houses.[4]

Here, as in 1969, there cannot be the slightest doubt that the defendant's expenditures far exceeded any of his reported income. Indeed, as already stated, the $10,000 in cash which Nicholas Intrieri said that his brother gave him in 1969 toward the purchase of his house, along with the undisputed expenditures which total almost $16,000, which did not include ordinary cost-of-living expenditures, substantially exceeded the defendant's reported income of $15,812.00.

D. The 1970 Cash Expenditures

In 1970, the defendant reported a gross income of $24,264.00, and was charged with making expenditures of $34,254.67, which did not include ordinary cost of

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[4] After the houses were purchased, the defendant provided the monies to pay the cost of fire insurance (Tr. 59-62). There were, of course, no mortgage payments.

living expenses. These expenses must have been substantial, because it will be remembered that in this year, the defendant, also supported the four children of his brother, Nicholas Intrieri. The only significant item which the defendant disputed was the increase in his bank accounts of approximately $9,118.72. There was, however, no dispute that there had been such an increase. Instead the defendant alleged that it had not been shown that there was no non-taxable source for this money. Of course, the defendant—as was his right—offered no explanation as to the source of these monies. We shall shortly deal with the argument regarding the failure to negate a non-taxable source for the defendant's expenditures. Suffice it to say that, for the third straight year, the defendant's expenditures exceeded his reported income by a significant amount and that these expenditures included the purchases of such "luxury" items as expensive furniture and draperies (costing in excess of $6,000) which were paid for in cash.

E. The 1971 Cash Expenditures

In 1971, the defendant had a reported income of $24,886, and was charged with expenditures of $70,023.44, which did not include ordinary cost of living expenses. There were only two significant disputed items. The first was an increase in the defendant's bank accounts of $19,640.35. The dispute was not over the size of the increase, but whether a non-taxable source for this money, for which no explanation was offered, had been negated.[4a] The other disputed item was a $15,000 cash purchase of a Mercedes Benz. Here, again, the late Mr. Babio is said to have been the source of these funds. Mr. Babio, it will

[4a] In fact, there was even no dispute in this regard, since it was conceded for the purpose of trial, by the United States, that the increases in defendant's bank accounts in 1971 were from a non-taxable source, *i.e.* the sale of a house he had inherited in 1948. It was the position of the United States that, even crediting him with this as non-taxable income, his expenditures still exceeded that figure plus his reported income (See Appendix, *infra*, p. 5a).

be recalled, had also allegedly provided $20,000 in cash for the defendant's home in 1968.

It seems that in the early part of 1970, prior to his death, Mr. Babio told his wife Florence that he had promised to buy their daughter, the defendant's wife, a car (Tr. 258). And, for this purpose, he gave his wife Florence $15,000 *in cash* (Tr. 260): "My husband had given it to me to give to her but he—but—he didn't live to see it." The scene in which the cash was handed over to Mrs. Babio was described by her as follows (Tr. 262-264):

> Q. Where was it—where were you when your husband gave you that 14 to $15,000? A. I don't remember. I was home. I was—
>
> * * *
>
> He said he had a surprise for Rose Marie, my daughter. And I asked him what was it and he showed me.
>
> Q. And how did it look when he showed it to you, was it in an envelope? A. Yes.
>
> Q. The same kind of envelope that the $20,000 was in? Or similar? A. Yes.
>
> Q. Were you surprised? A. I was thrilled.
>
> Q. You didn't know he had $15,000 or 14 to $15,000, is that correct? A. No, I didn't know how much he had. I knew he had money.
>
> Q. He kept that money in your house? A. He might have. I have no idea where he kept it.
>
> * * *
>
> Q. And I take it you took that 14 or 15,000 and put it in the metal box in the apartment? A. Yes.
>
> Q. You kept it in your metal box until later that year? A. And I told my daughter."

* * *

And so it was that in 1971, Rosemary Intrieri, the wife of a New York City Police Lieutenant, was able to

purchase a brand new Mercedes Benz for $15,000 in cash, to go along with the fur coat she purchased in that year for $3,114.00.

We need not here reiterate the evidence with regard to the late Mr. Babio discussed at pp. 8-9, *supra*, which conclusively established the falsity of a story which is so implausible on its face; for it is plain that again in 1971, the defendant's expenditures far exceeded his income, as the jury found.

ARGUMENT

POINT I

The evidence established with reasonable certainty that the expenditures made by the defendant were not made from income earned in prior years.

The defendant argues that "the government failed to establish with reasonable certainty the amount and nature of the assets available to him at the commencement of the prosecution years, so as to negate beyond a reasonable doubt, the fact that any funds expended by the defendant during the years embraced by the indictment had not, in fact, been received by him prior thereto" (Br. 22). Although the defendant's brief contains an almost endless and sometimes confusing discussion of the law (Br. 13-22), the basic principles to be applied here are essentially undisputed. And, we submit, that the United States has amply satisfied its burden of establishing with reasonable certainty that the defendant's expenditures in the years in question, 1968-1971, were not the product of assets which the defendant had earned in prior years and had available to him. This, of course, is all that need be shown in a cash expenditures case. *Taglianetti* v. *United States*, 398 F.2d 558 (C.A. 1, 1968), *affirmed*, 394 U.S. 316 (1969); *United States* v. *Fisher*, 518 F.2d 836 (C.A. 2, 1975), *certiorari denied*, — U.S. — (1976); *United*

States v. Bianco, — F.2d —, No. 75-1244, Slip op. 3099 (C.A. 2, April 8, 1976).

The nature of the evidence was threefold: First, the testimony of his wife as to her knowledge of the defendant's net worth as of early 1968. Such evidence was apparently held sufficient by itself, in *United States* v. *Fisher*, *supra*, 518 F.2d 836, 841, to establish the nature of the defendant's assets at the time of commencement of the period during which he is being charged with evading his taxes. Second, an exhaustive investigation by the I.R.S. to discover any possible income which he may have had in the years prior to 1968. Such an investigation has been expressly approved as a method of establishing the absence of any assets at the time of the commencement of the period during which he is being charged with evading his taxes. See *United States* v. *Bianco*, *supra*, Slip op. 3102-3105; *United States* v. *Schipani*, 362 F.2d 825 (C.A. 2, 1966), *vacated and remanded*, 385 U.S. 372 (1966). Third, the United States conclusively negated the defendant's own explanation for the large bulk of his expenditures as it was required to do under the holding in *Holland* v. *United States*, 348 U.S. 121, 136 (1954).

We proceed now to detail that evidence.

In April, 1968, the defendant was divorced from his wife of eleven years, Joan Intrieri (Tr. 91-92). Prior to the divorce, a separation agreement was entered into pursuant to which she received the bulk of the marital property, including the proceeds of a $6,000 joint savings account (Tr. 91), a half-interest in the family home in which she continued to reside (Tr. 94), and the family car (Tr. 94).[5] Mrs. Intrieri, despite the unhappy ending

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[5] Mrs. Intrieri was also awarded $100.00 a week in alimony and child support. Although these payments were initially paid by check, they were later made in cash (indeed, 90% of the payments were in cash). (Tr. 96).

to her marriage, nevertheless was a friendly witness whom the defendant had treated generously in the years following their divorce (Tr. 99-102). She testified, however, that she did not know of any assets available to the defendant (other than those accounted for in the case-in-chief, and shown not to have provided the source of the expenditures), nor did she know of any sizeable amount of cash available to him at the time of the divorce (Tr. 96-97, 114). This testimony of the defendant's wife of eleven years, who presumably had an interest in learning the full details of her husband's finances before entering into a financial settlement, and who after eleven years of marriage would have had a fairly good idea of his approximate net worth, constitutes reasonably certain evidence of his financial condition in 1968. See *United States* v. *Fisher*, 518 F.2d 836, 841-842 (C.A. 2, 1975), *certiorari denied*, — U.S. — (1976). But in this case there was more. Not only was it shown that none of the known assets which the defendant had in hand in 1968 provided the source for the expenditures with which he was charged, but a determined and exhaustive effort was undertaken to discover any possible assets.

Thus, it was shown that the defendant's second wife, Rosemary Babio, whom he married in 1968, had no financial resources at the time of the marriage (Tr. 121-123). Indeed, in the year prior to her marriage, she was supported by her parents (Gov. Ex. 188).[3] Moreover, the Internal Revenue Service undertook an extensive investigation into every possible source of non-taxable assets which could have been accumulated prior to the years at issue.

In order to determine whether the defendant had inherited any assets for which he had not already been

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[3] Interestingly, after her marriage to the defendant, Rosemary Babio continued to maintain a checking account in her prior married name (Rosemary Nelson) (Tr. 950-954), and the extent of the activity in that account indicated that it was yet another device to surface income upon which tax had been avoided (Gov. Ex. 230).

credited, the records of the Surrogate's Court in the five counties of New York City, as well as other counties in which relatives resided were checked (Tr. 999). Similar inquiries were made to determine whether any assets had been obtained through purchase or sale of property, including chattel mortgages (Tr. 999-1000). Inquiries were also made at the central indices of larger banks of New York City and no accounts other than those already credited to the defendant and accounted for, were found (Tr. 1001). Banks in the vicinity of the defendant's residence, his place of employment and areas where he cashed payroll checks, were also canvassed with similar results (Tr. 1001). In addition, inquiry was made to major credit agencies to determine if any loans were made by the defendant or his wife, a check was made of gift tax returns of his relatives to determine whether he was the recipient of any gifts, the New York Insurance Index Bureau was checked to see if the defendant or his wife had received any insurance settlements, and the records of the United States Treasury were checked to determine whether the defendant or his wife had cashed any savings bonds during th period in question. The response to all these inquiries were negative (Tr. 1002-1003). Moreover, an income tax return filed in 1967 showed no additional source of income in that year by way of bank accounts, real estate or stock which were not accounted for in the case-in-chief (Gov. Ex. 209).[5]

The totality of this evidence, we submit, was more than sufficient to establish that the defendant's resources at the start of 1968 did not and "could not have contributed at all to his expenditures during the years in question". *United States* v. *Bianco*, — F.2d —, No. 75-1244, Slip. op. 3099, 3102 (C.A. 2, April 8, 1976). And, it closely parallels the proof in *United States* v. *Bianco*, *supra*. There, in response to similar evidence of an exhaustive search for assets, the defendant who "presented

[5] Although the record does not so indicate, the income tax returns for prior years were no longer available when the investigation of the defendant began in 1975.

no defense and no evidence" argued that "the prosecution had failed to negate the possibility of a so-called 'cash hoard' ". (Slip op. 3104-3105). In rejecting this claim, in the absence of any evidence of the defendant to support the likelihood of a cash hoard, this Court observed (Slip op. 3105):

> "Of course, as in any criminal prosecution, the defendant is under no obligation to prove any particular set of facts, including the existence of a non-taxable source, such as a 'cash hoard' from which his expenditures were made. But once the government has introduced sufficient evidence from which the jury could conclude with reasonable certainty that no such assets existed, the defendant remains silent at his own peril. *Holland* v. *United States*, *supra*, 348 U.S. at 138-39; *United States* v. *Penosi*, 452 F.2d 217, 220-21 (5th Cir. 1971), *cert. denied*, 405 U.S. 1065 (1972), *United States* v. *Shipani*, *supra*, 362 F.2d at 830."

Here, of course, as we have shown, the defendant, through his relatives, claimed that the large bulk of his expenditures were the product of cash hoards maintained by his relatives. Indeed, as to these expenditures, his defense was totally inconsistent with any claim that *he* had earned or accumulated the cash in the years prior to 1968. Yet, as we have shown, the United States not only negated with reasonable certainty the existence of prior assets, but conclusively demonstrated that the cash for the post-1968 expenditures did not come from the defendant's relatives. In short we fully satisfied our obligation to check out explanations as to sources of those expenditures which were "reasonably susceptible of being checked." *Holland* v. *United States*, 348 U.S. 121, 138 (1955).

The defendant's arguments to the contrary, allegedly based upon "an examination of certain portions of the trial record" (Br. 22) are frivolous:

1. The defendant begins that examination by noting that "[u]nlike most net worth or expenditure cases, the defendant was never questioned by the government to ascertain his net worth or available assets immediately prior to the prosecution years." Of course, the defendant fails to note that he was offered the opportunity to testify personally before the grand jury prior to his indictment, but he refused to do so; apparently he felt comfortable allowing his relatives to speak for him. Moreover, there was nothing to prevent him from offering any further explanations as to the source of his income.

2. The next "strong indication of the government's failure to present an opening net worth" is allegedly to be found in the response to the defendant's bill of particulars (Br. 23). There, in response to the request to set forth with specificity the defendant's "net worth at the commencement and termination of the taxable period," the United States responded by stating "not applicable."

The response to the bill of particulars was plainly correct. In a cash expenditures case, unlike a net worth case, the United States need not make a formal statement as to the defendant's net worth at the starting point. As this Court observed in *United States* v. *Fisher*, *supra*, 518 F.2d at 842, n.7:

> "The major distinction, as noted above, is that the quantum of proof required under the cash expenditure theory, as distinguished from the net worth theory, is the reasonable showing of the available sources of funds during the years in question rather than a formal net worth statement."

3. Next the defendant points to the alleged absence of a discussion of a starting point or opening net worth

in the opening statement of the Assistant United States Attorney. And he claims that there was absent in this case the usual effort on the part of the government to "intensely scrutinize [the] taxpayer's past financial history in order to buttress or lend credence to its assessment of the taxpayer's opening net worth" (Br. 24-25).

Here again, of course, it must be kept in mind that in a cash expenditures case, the proof as to opening net worth is satisfied simply by "a reasonable showing of the available sources of funds during the years in question rather than a formal net worth statement." *United States* v. *Fisher*, *supra*. More significantly, the evidence adduced at trial did reflect an intense scrutiny of the defendant's financial history. And, finally, the opening statement of the Assistant United States Attorney dealt extensively with what at that point appeared to be the only explanation upon which the defense rested, *i.e.* that the money used for the large bulk of the expenditures was supplied by the defendant's relatives (Tr. 11-13). Indeed, it is ironic, in light of the emphasis placed upon this issue on appeal, that the opening statement of the defendant did not even suggest that the expenditures were derived from earnings in the years prior to 1968. To the contrary, the defense that was stressed, that the defendant's relatives were that source of the monies for these expenditures, is plainly inconsistent with the claim that the monies were earned in prior years. It was only when the testimony of his relatives was discredited in the case-in-chief, that the defendant fell back on this defense.

4. The defendant also faults the United States for failing to introduce the defendant's tax returns for five years prior to 1968. But, by the time this investigation

began in 1975, the only pre-1968 return that had not been destroyed by the Internal Revenue Service was the 1967 return. And that return, as we have already observed, provided no additional source of income to justify the post-1968 expenditures. Thus the failure to examine these returns hardly supports defendant's claim that a "thorough investigation was not undertaken (Br. 25).[7]

5. The final, and perhaps the most specious of all of the defendant's arguments on this issue, is that the application of the United States to reopen its case-in-chief, after the defense case, to show that two relatively insignificant sources of assets ($2,000 in two savings accounts) available in 1968 remained with the defendant's first wife, is "another indication of the inadequacy of the government's presentation of the defendant's opening net worth" (Br. 27). This argument hardly warrants a response.

In sum, the evidence that the defendant evaded his income taxes was overwhelming. And, it was buttressed by the nature of his extraordinary expenditures, and the efforts made to conceal its true source. Moreover, the belated argument that the investigation into his pre-1968 assets was inadequate and that it failed to negate significant assets available to him prior to 1968, is flatly contradicted by the record and by the absence of a shred of evidence to suggest that he had any such assets. See *United States* v. *Bianco*, *supra*, Slip op. p. 3105.

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[7] Interestingly, Part 9, § 9327.1(4) of the Internal Revenue Manual, upon which the defendant relies (Br. 25), recommends only that "available" returns for the five years prior to 1967 be examined.

POINT II

The District Court properly discharged its judicial functions and did not deprive the defendant of a fair trial.

The defendant has cited five isolated instances which took place during the trial, two of which were out of the presence of the jury, and, to only one of which was a timely objection voiced at trial, to support his claim of impropriety by Judge Judd. We submit that none of the instances of alleged judicial misconduct were, in fact, improper and that any alleged impropriety was harmless in light of the overwhelming evidence of the defendant's guilt. We proceed now to a more detailed discussion of these allegations.

1. The first instance of judicial impropriety allegedly occurred during the cross-examination of Robert Muir, an officer of the Manufacturers Hanover Trust Company. Mr. Muir had been called to testify to increases in bank accounts in the defendant's name in 1970 and 1971. On cross-examination, the defendant's counsel put the following question:

> Q. Do you know of any other way of determining whether or not those deposits and how much of those deposits made in check were taxable or non-taxable income with respect to those ledger cards in front of you?

The following colloquy, then ensued (Tr. 847-848):

> The Court: I don't hear anything from Mr. Puccio but perhaps you will explain to the Court how you can tell from the face of the check whether it is taxable or non-taxable?
>
> Mr. Cintolo: For instance, refunds are non-taxable; returns of a capital investment are not taxable——

The Court: I am asking, from the face of a check how you can tell it is taxable or non-taxable income?

Mr. Cintolo: Would you like me to respond?

Mr. Puccio: I'd like to hear it.

The Court: Yes.

Mr. Cintolo: A check from an insurance company, I could go back and ask the insurance company what the check was issued for. If the insurance company informed me the check was issued for payment of insurance benefits, for payment of illness or injury, that is non-taxable.

If I saw the check was drawn by the Prudential Insurance Company and I went to them and asked them and they told me it was the cashing in of an endowment insurance I would know that it is non-taxable income.

If the check was written by the United States Government and I asked them and they told me it was a refund of prior years' overpayments of taxes, I would know it was non-taxable.

If drawn by an individual I might be able to go to the individual and ask him what it was for and if he told me the check was drawn for the repayment of capital investments or repayment of a loan I would know that it would be non-taxable.

The Court: I have not heard yet of capital investments or loans.[*]

The defendant alleges that "this interjection" by the district court was "an unnecessary intrusion upon the

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[*] We regret setting forth lengthy excerpts from the transcript. This is necessitated, however, by the failure of the defendant to file any appendix.

trial proceedings and tended to express the court's opinion to the jury that the burden of proof rested upon the defendant to prove the existence of non-taxable receipts" (Br. 31).

This claim is without substance as the absence of any objection or request for limiting instruction at the time amply demonstrates. Judge Judd's question simply did not suggest, either expressly or implicitly, that the burden of proof rested upon the defendant "to prove the existence of non-taxable receipts". And, of course, Judge Judd gave a more than ample instruction on this issue when he charged the jury.

Nor, we submit, can his question be fairly characterized as an "unnecessary intrusion". A federal judge sits to see "that justice is done before him" and "it is his duty to see that a case on trial is presented in such a way as to be understood by the jury as well as himself." Accordingly, he "should not hesitate to ask questions for the purpose of developing facts; and it is no ground of complaint that the facts as developed may hurt or help one side or the other." *Simon* v. *United States*, 123 F.2d 80, 83 (C.A. 4), *certiorari denied*, 314 U.S. 694 (1941); *United States* v. *Rosenberg*, 195 F.2d 583, 594 (1952), *certiorari denied*, 344 U.S. 838 (1952).

Here it is plain from the response of the defendant's counsel, that the question he put to the witness was pointless and possibly confusing. Quite obviously, it is impossible normally to tell from the face of a check whether it constitutes taxable income. And the response of defense counsel indicated as much; for, he said only that information obtained from the fact of the check could merely provide a basis for further inquiry. Judge Judd's question, which elicited this clarification, was perfectly proper.

2. The defendant's next claim is that the trial judge acted improperly "in calling to the government's attention, *sua sponte*, possible capital gain consequences of a specific transaction involving the defendant during the prosecution years and thereafter allowing the prosecutor to negate and contradict the stipulation entered into by the Government * * * regarding this transaction" (Br. 27, 31-35).

This claim is also without substance. The evidence established that in 1948 the defendant had inherited a piece of real property which was sold in 1971. Although the defendant did not record this transaction, as he was required to do on his income tax return, the United States stipulated, as the defendant correctly observes, that "the receipts acquired by said sale would be credited to the defendant as non-taxable assets available to him for expenditures alleged in the prosecution year 1971" (Br. 32).

When this pretrial agreement was again restated at the trial Judge Judd, out of the presence of the jury (Tr. 1028), inquired as to the reason for the stipulation, and after some colloquy he observed—again out of the presence of the jury—that although "[i]t may have been a stipulation without factual base * * *, if the government makes a stipulation, I will take it" (Tr. 1030).

The record, contrary to the defendant's claim (Br. 33), does not show that the Assistant United States Attorney, prior to the conclusion of this colloquy "asked to be relieved of his stipulation." And, indeed, at no time did he make any argument inconsistent with that stipulation. Subsequently, Judge Judd did permit further questioning, with regard to this transaction, but solely for the purpose of showing that regardless of whether the defendant received a gain or loss, the transaction should have been recorded on Schedule D, and the failure to

do so was relevant on the issue of the defendant's intent to file an honest return (Tr. 1089). We deal more fully with the propriety of that ruling in Point III. It suffices to state here, however, that the testimony admitted did not in any way undermine the pretrial agreement that the receipts received from the sale of the house would be credited to the defendant as non-taxable assets available to him for the expenditures alleged in 1971. And the very testimony and colloquy of Agent Valenti and the tax expert, Sidney Buchbinder, cited by the defendant (Br. 33), reflect adherence to that stipulation and to the limited purpose of their testimony (Tr. 1083, 1101, 1102, 1104-1105).

3. The defendant also makes the related argument, that it was improper for Judge Judd to have made the following statement with regard to the transaction involving the sale of the house (Tr. 1089):

> "I am saying he should have filed Schedule D showing a gain or loss and that his failure to do so can be considered as bearing on his intent to file an honest return."

The defendant argues that this "action by the Court, without any prior testimony, explaining either capital gains, Schedule D's, or the manner in which a capital gain would be normally reported, constituted testimony by the court adversely prejudicial to the defendant." This argument is disingenuous as well as frivolous.

The statement of Judge Judd is taken out of context from a colloquy explaining to the jury the limited purpose of admitting testimony regarding the sale of the real property in 1971 and its potential tax consequences. The colloquy began at page 1088 of the transcript, after a long side-bar discussion:

The Court: Let me just tell the jury in connection with this that the $5,600.00 figure [as to the value of the property at the time it was inherited] is not being used by the Government to change the allowance [ ]he $21,000.00 that was received. But, the fa[ ]that no report of gain or loss on the transaction was included in his tax return is being admitted as bearing on his intent when he prepared the income tax return for 1971.

Mr. Alch: May I approach the side bar?

The Court: No. I have ruled.

Mr. Alch: May I point out that your instruction to the jury allows the jury to infer that that figure represents the purchase price and it wasn't the purchase price.

The Court: I am saying he should have filed Schedule D showing a gain or loss and that his failure to do so can be considered as bearing on his intent to file an honest return.

It is obvious that, in context, Judge Judd was merely emphasizing the limited purpose for receiving the testimony, rather than improperly interjecting his own opinion to the jury. Moreover, shortly after the colloquy, the next witness, a tax expert, provided the evidentiary basis for Judge Judd's instruction (Tr. 1101-1106).

4. A further example of allegedly "improper judicial intervention" cited by the defendant is Judge Judd's question, after having observed the expenditure charts intended to be offered into evidence by the government, asking why the defendant was not charged with ordinary living expenses (Tr. 1030).

This question, which the defendant neglects to point out, was outside the presence of the jury ([ ]r. 1028),

and to which no objection was taken, could not have in any way prejudiced him. Moreover, it obviously reflected little more than the curiosity of an intelligent and able district court judge.

5. The final act of judicial impropriety cited by the defendant is the brief comment on the evidence made by the district court judge. Judge Judd at the close of his charge told the jury (1289):

> "A federal judge has the right to comment on the evidence but I won't try to marshal and analyze it. You've listened to a long analysis by the Government. You've listened to an analysis and interpretation of the evidence by the defendant.
>
> I am not going into any details about that.
>
> I will point out we have an unusual case here. First, in the coincidence of three different people who had cash hoards.
>
> Secondly, three of the Government's witnesses it has asked you to believe in part and disbelieve in part."

These comments were perfectly proper. It is settled law that:

> "The trial judge in a federal court may summarize and comment upon the evidence and inferences to be drawn therefrom, in his discretion. * * * The purpose of such summation and comment is to assist the jury in winnowing out the truth from the mass of evidence, much of it conflicting, and perhaps placed out of focus by different claims concerning its meaning and interpretation by the arguments of the parties. So long as the trial judge does not by one means or another try to impose his own opinions and conclusions as to the facts on the jury and does not

> act as an advocate in advancing factual findings of his own, he may in his discretion decide what evidence he will comment upon. His fairness in doing so must be judged in the context of the whole trial record, particularly the evidence and the arguments of the parties."

United States v. *Taurino*, 428 F.2d 865, 869 (C.A. 2, 1970).

Judge Judd's comments were well within the bounds of standards set forth above. Indeed, with respect to the second aspect of the case which Judge Judd found to be unusual, he merely echoed the comments of defense counsel (Tr. 18). Moreover, Judge Judd repeatedly instructed the jury that it was their privilege to decide which version of the facts they chose to credit (Tr. 1284), that it was within their province to resolve issues of credibility (Tr. 1288), and that nothing he said about particular pieces of evidence should "prevent you from making the decision based on your own recollection of the facts" (Tr. 1290).

Finally, while we believe that Judge Judd's comments were plainly appropriate, in light of the overwhelming evidence conclusively demonstrating the falsity of "cash hoard" defense, any impropriety was harmless.

POINT III

The District Court did not err in allowing a tax expert to answer a hypothetical question concerning the possible tax consequences of the sale of property by the defendant in 1971.

We have previously observed in Point II that, although it was stipulated that the money received by the defendant from the sale of inherited real property in 1971 would be credited to the defendant as a non-taxable asset available to him in 1971, evidence regarding that transaction was admitted because the defendant failed to file a Schedule D return detailing the transaction. The failure by him to do so was relevant on the issue of his intent to file an honest return. The defendant's argument here turns on one question put to an expert witness. As set forth in the defendant's brief, the objectionable question is as follows (Br. 37):

> "Question: Mr. Buchbinder, you are an expert, which has been conceded, in the computation of taxes, and I have one additional question for you. If an individual were to inherit property in 1948 which was valued in 1948 at $5,600. . . .
>
> "Question: Taking into consideration the property in 1948 inherited was worth approximately $5,600 and that the same property was sold in 1971, some twenty-two years later, and at the time over $20,000 approximately was received by the person selling it as profit, could you tell us if there was any tax due and owing based upon that transaction?"

What the defendant omits is what followed afterwards (Tr. 1101-1102):

> Mr. Alch: Your Honor, I object on the grounds the government cannot have it both ways. They are giving the defendant a complete credit on non-

taxable income as to the entire proceeds of the house and——

Mr. Puccio: That is correct.

Mr. Alch: And this testimony is not only inconsistent but irrelevant.

The Court: I think the question you should ask is how it should be reflected in the income tax return.

Mr. Puccio: All right.

Q. How should the transaction, Mr. Buchbinder, be reflected in an income tax return for the year 1971? A. It would be reflected as a long term capital gain.

Q. What type of form is that reported on? A. On a schedule D.

Q. Which is attached to the return? A. Yes.

It is, therefore, apparent that the question as restated and answered merely reflected the limited purpose for which the testimony was admitted. And, indeed, after further objection by the defendant, Judge Judd repeated to the jury his reason for permitting the question (Tr. 1104-1105):

"The Court: All I was allowing it for was to show the relevant schedule had not been included in the tax return and Mr. Buchbinder I think is showing why it is relevant.

I will overrule the objection for that reason."

Moreover, contrary to the defendant's claim, there was evidence, in the form of an estate tax return, in the record as to the value of the property at the time the defendant inherited it (Government's Exhibit 155A, Tr. 1100) and as to the value at the time it was sold (Tr. 1019).

But, in any event, it is plain when read in context, that no error, much less reversible error, was committed.

POINT IV

The District Court did not abuse its discretion in admitting acts, in years not embraced by the indictment, on the issue of wilfulness.

The defendant claims that reversible error was committed with respect to the admissibility of two acts which occurred subsequent to the years during which he was charged with evading his taxes. This claim is without substance.

1. The first line of evidence which the defendant finds objectionable is the testimony that in January, 1972, the beginning of the year after the purchase of the Mercedes Benz automobile for $15,000 in cash which allegedly was a posthumous gift of the defendant's father-in-law, the defendant contracted for the purchase of a Buick Electra Custom for which he later that year paid $6,021.05 in *cash*.

This evidence, which was not alleged to be another criminal act, was plainly relevant to show that the defendant himself made it a practice to make large cash transactions, and to rebut the claim that the money for other such transactions were supplied by others. Indeed, we do not understand the defendant to suggest that this evidence was not relevant. He merely argues that its probative value was outweighed by its usefulness. While we disagree, "the weighing of the probative value of the evidence against its potentially prejudicial effect is primarily for the trial judge who has a feel for the effect of the introduction of this type of evidence that an appellate court, working from a written record, simply cannot obtain." *United States* v. *Leonard*, 524 F.2d 1076, 1092 (C.A. 2, 1975), *certiorari denied*, — U.S. — (1976).

2. The second transaction about which the defendant complains involves testimony which established that

in 1975, the defendant purchased a Mercedes Benz automobile from an acquaintance in Connecticut for $8,750, and that he asked the seller to prepare an invoice for $5,500, with the balance of $3,250 to be paid in cash. Moreover, after the grand jury investigation of the defendant began, and subpoenas were served, the defendant called the person who sold him the car, asked whether he, like others, had been subpoenaed and then requested a corrected invoice (Gov. Ex. 227).

The evidence is relevant for a number of reasons. It shows a continuing pattern of cash transactions, and an affirmative act to conceal the transaction. Moreover, the effort to obtain a corrected invoice after the grand jury investigation began, showed evidence of guilty knowledge. Here, again, the evidence was plainly relevant, and for the same reasons, previously discussed, its admission did not involve an abuse of discretion. See *United States* v. *Leonard*, *supra*. In any event, in light of other overwhelming evidence, its admission, if error, was harmless.

POINT V

The remaining two arguments of the defendant are without substance and require only brief discussion.

1. The defendant argues that it was reversible error for the district court judge to have permitted the United States to reopen its case, after the defense had rested, to show that two $2,000 which the defendant had in bank accounts in 1968 remained with the defendant's wife, Joan Intrieri and were thus not available to him to spend in the years at issue (Tr. 1139). The decision to permit the United States to reopen its case was well within the discretion of the trial judge. Moreover, the

total assets involved were so insignificant when compared to the expenditure of $200,000 in the years at issue, that even if these assets had not been negated, it would not have any significant impact on the strength of the case-in-chief.

2. In his summation to the jury, the defense counsel strongly argued that the United States had failed to negate the possibility that the defendant had not previously earned the monies he spent in the years 1968-1971, and told the jury that, even if they were convinced beyond a reasonable doubt that the defendant evaded his income tax, they still should acquit if it was evaded prior to 1968 (Tr. 1249).

In rebuttal, the Assistant United States Attorney responded (Tr. 1257-1258):

> "I started out this morning by telling you what the defendant had available to him in 1968. Mr. Alch is suggesting to you that you find that the defendant evaded his income tax return, but he didn't evade his income tax in 1968, 1969, 1970. He evaded his income tax in prior years.
>
> In other words, he had unreported income from prior years.
>
> I submit to you there is no evidence [of] that [in the] case, for openers.
>
> Have you heard any evidence that the defendant evaded his income tax in prior years and [that in] the money that he spent during the years in question, there's nothing like that in the record. A red herring.
>
> Mr. Alch: Your Honor, I'm going to object to that. That burden is upon the Government and not the defendant. There is an implication that there is a burden on our part.

> The Court: Well, I don't think Mr. Puccio meant the defendant was obligated to show that. I think Mr. Puccio could probably refer to the amount of evidence that there is and then question, whether that supports any idea that either unreported income or assets are unreported income that is not disclosed.
>
> Mr. Alch: Thank you, your Honor."

The claim that the comments of the Assistant United States Attorney constituted a "blatant reference" to the defendant's failure to testify, is simply without substance. First, if monies were made in the years prior to 1968, the defendant was not the only person who could have testified to this fact, unless he printed the money himself. Second, these comments could not "naturally and necessarily be interpreted by the jury as a reference to the defendant's failure to testify" (Br. 46), and not even the defendant suggested that in the objection voiced at trial. Third, any prejudice was cured by the instruction which immediately followed. And, finally, any error, if error there was, was harmless.

CONCLUSION

The judgment of conviction should be affirmed.

Dated: June 9, 1976

Respectfully submitted,

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

EDWARD R. KORMAN,
Chief Assistant United States Attorney,
Of Counsel.

APPENDIX

PASQUALE AND ROSEMARIE INTRIERI

1968 EXPENDITURES

Federal Income Tax (Withheld)	$ 2,752.11
F.I.C.A. Employee Tax (Withheld)	343.20
New York State Income Tax (Withheld)	667.19
New York City Income Tax (Withheld)	127.40
Real Estate, Gasoline and Sales Taxes (Per Return)	1,251.00
Contributions (Per Return)	290.00
Interest Expense (Per Return)	535.00
Medical Expenses (Per Return)	1,414.00
Miscellaneous Expenses (Per Return)	1,120.00
Purchase of 33-64 165th Stre(	29,584.06
Mortgage Principal Payments (2725 Utopia Parkway)	194.84
Rent (9-20 166th Street)	775.00
Support Payments	3,580.00
Vacation Expenses	088.79
TOTAL	$43,322.59

PASQUALE AND ROSEMARIE INTRIERI

1969 EXPENDITURES

Federal Income Tax (Withheld)	$ 2,356.14
F.I.C.A. Employee Tax (Withheld)	374.40
New York State Income Tax (Withheld)	559.13
New York City Income Tax (Withheld)	102.40
Pension Payments (Withheld)	393.51
Real Estate, Gasoline and Sales Taxes (Per Return)	1,390.00
Contributions (Per Return)	290.00
Interest Expense (Per Return)	1,143.00
Miscellaneous Expenses (Per Return)	1,280.00
Increase in Bank Accounts	1,929.54
Mortgage Principal Payments (33-64 165th Street)	345.46
Support Payments	4,460.00
Vacation Expenses	605.88
Insurance	592.00
Purchase of 766 and 768 Kimball Avenue	44,731.73
TOTAL	$60,553.19

PASQUALE AND ROSEMARIE INTRIERI

1970 EXPENDITURES

Federal Income Tax (Withheld)	$ 3,976.10
F.I.C.A. Employee Tax (Withheld)	374.40
New York State Income Tax (Withheld)	1,062.37
New York City Income Tax (Withheld)	192.00
Pension Payments (Withheld)	603.21
Real Estate, Gasoline and Sales Taxes (Per Return)	1,375.00
Contributions (Per Return)	480.00
Interest Expense (Per Return)	1,021.00
Miscellaneous Expenses (Per Return)	1,280.00
Increase in Bank Accounts	9,118.72
Mortgage Principal Payments (33-64 165th Street)	381.80
Support Payments	4,460.00
Vacation Expenses	607.97
Gift to Nicholas Intrieri	1,000.00
Home Furnishings (Furniture and Draperies)	6,079.10
Improvements to Property (Driveway)	1,000.00
Insurance	1,243.00
TOTAL	$34,254.67

PASQUALE AND ROSEMARIE INTRIERI

1971 EXPENDITURES

Federal Income Tax (Withheld)	$ 3,336.16
F.I.C.A. Employee Tax Withheld)	405.60
New York State Income Tax (Withheld)	924.65
New York City Income Tax (Withheld)	266.90
Pension Payments	540.43
Real Estate, Gasoline and Sales Taxes (Per Return)	2,538.00
Contributions (Per Return)	540.00
Interest Expense (Per Return)	1,178.00
Miscellaneous Expenses (Per Return)	1,273.00
Medical Expenses (Per Return)	1,612.00
Increase in Bank Accounts	19,640.35
Purchases of Automobiles	23,334.70
Mortgage Principal Payments (33-64 165th Street)	433.27
Increase in Escrow Account (33-64 165th Street)	452.56
Mortgage Principal Payments (2725 Utopia Parkway)	2,148.96
Support Payments	4,460.00
Vacation Expenses	659.86
Insurance	1,094.00
Home Furnishings (Furniture)	2,071.00
Fur Coat	3,114.00
TOTAL	$70,023.44

PASQUALE AND ROSEMARIE INTRIERI

COMPUTATION OF ADDITIONAL TAXABLE INCOME

1968, 1969, 1970 AND 1971

	1968	1969	1970	1971
Expenditures (Per Investigation)	$43,322.59	$60,553.19	$34,254.67	$70,023.44
Less: Non-Taxable Receipts	3,448.71	1,976.00	2,149.01	24,384.36
Total Income (AGI) (Per Investigation)	$39,873.88	$58,577.19	$32,105.66	$45,639.08
Less: Exemptions	3,000.00	3,000.00	6,875.00	5,400.00
Itemized Deductions	4,137.00	4,764.00	5,410.00	6,721.00
Taxable Income (Per Investigation)	$32,736.88	$50,813.19	$19,820.66	$33,518.08
Less: Taxable Income (Per Return)	10,505.00	7,948.00	11,979.00	12,149.00
Additional Taxable Income	$22,231.88	$42,865.19	$ 7,841.66	$21,369.08

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COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

LYDIA FERNANDEZ, being duly sworn, says that on the 15th day of June, 1976, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, two copies of the Brief for the Appellee of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

Gerald Alch, Esq.
One Center Plaza
Boston, Massachusetts 02108

Sworn to before me this
15th day of June, 1976

Carolyn N. Johnson

CAROLYN N. JOHNSON
NOTARY PUBLIC, State of New York
No. 41-4618298
Qualified in Queens County
Term Expires March 30, 19...77

Lydia Fernandez

LYDIA FERNANDEZ